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February 21, 2003

Country of Origin Labeling Program
Agricultural Marketing Service
U.S. Department of Agriculture
STOP 0249, Room 2092-S
1400 Independence Avenue, SW
Washington, DC 20250-0249

Re: Estimated Costs Associated with Country of Origin Labeling Program

Dear Sir or Madam,

The Food Marketing Institute¹ (FMI) is pleased to respond to your request for comments on the information collection costs associated with the U.S. Department of Agriculture's (USDA's) program entitled, "Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts under the Authority of the Agricultural Marketing Act of 1946" (hereinafter COL Guidelines). 67 Fed. Reg. 70205 (Nov. 21, 2002). As discussed more fully below, we believe that USDA's estimate -- which only appears to consider some of the labor costs involved in establishing and maintaining a recordkeeping system -- has substantially underestimated the information collection costs that will actually be associated with USDA's country of origin labeling (COL) program for the retail community, and probably for the remainder of the supply chain as well.

Executive Summary

Under the recently amended Agricultural Marketing Act (AMA), retailers will be required to inform consumers of the country of origin of more than 600 different "covered commodities" in every retail food store. As country of origin is determined well before the food reaches the grocery store, each retailer will need to work with literally thousands of suppliers to obtain the information necessary to satisfy the retailer's obligations under the law.

¹ FMI conducts programs in research, education, industry relations and public affairs on behalf of its 2,300 member companies — food retailers and wholesalers — in the United States and around the world. FMI's U.S. members operate approximately 26,000 retail food stores with a combined annual sales volume of \$340 billion — three-quarters of all food retail store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from 60 countries.

As required under the federal statute as interpreted by USDA, providing “country of origin” information will entail determining and documenting the country in which each stage of production occurs for each and every item. Records must be maintained in every grocery store for each covered commodity – every tomato, apple, kumquat, package of hamburger, pork rib, lamb chop, shrimp, fillet of sole, peanut and many, many more items – for two years, despite the fact that most of these products have a shelf life of only a few days. Retailers will be responsible for maintaining comprehensive records and contracts with each and every supplier regarding the “verifiable audit trails” that the suppliers must maintain. Verifiable segregation plans must be developed and implemented in grocery stores to ensure that bananas from Guatemala are not inadvertently marked “Product of Costa Rica,” and hamburger from cows that were born in Canada and raised and slaughtered in the U.S. are not mistakenly marked “Born and raised in Canada, slaughtered in the U.S.”

USDA estimates that the recordkeeping system described in the COL Guidelines will require 40 hours of labor for retailers to develop and one hour per day per year to implement the system for each store. Although our members are still in the process of determining how best to ensure their compliance with the federal program, and, thus, cannot provide us with a specific time estimate, given the number of different items and the number of suppliers involved, cutting across multiple departments within the store, as well as multiple corporate functionalities, they universally agreed that setting up the type of recordkeeping system necessitated under the Guidelines will entail substantially more than 40 person hours per store. And, with more than 600 different products – comprised of literally tens of thousands of individual food items in every grocery store -- that will need to be tracked in multiple departments every day, recordkeeping will certainly take more than one person hour per day for ongoing implementation.

USDA's cost estimate stops there. Although the labor costs for recordkeeping will certainly be substantial and probably far greater than USDA estimated, the recordkeeping necessitated under the federal law will also require additional infrastructure costs, i.e., new physical or electronic resources to store and manage the volume of data required in a "readily accessible" manner. Small operators may depend on a physical paper trail to document country of origin for all of the covered commodities they sell, which will be extremely labor-intensive and will require significant physical assets and storage space to maintain.

Medium-sized retailers may have the capital to add more electronic equipment to handle the requirements of the law. One smaller grocery store chain estimated costs of \$45,000 to \$136,000 to install the terminals, software, central database and servers that would be necessary for their 18 stores to handle the information involved under the federal program. Handheld electronic devices could be added at store level to scan information electronically, however, these devices would cost an additional amount and would work only if the systems were reconfigured to encode the country of origin determination electronically from the point at which country of origin was determined.

Larger retailers may have more electronic capability already available, but will certainly need to invest some capital in hardware and/or software resources to ensure that the system will be able to fulfill the retailer's legal obligations.

Moreover, as the country of origin information that retailers are required to provide must be obtained from suppliers, the cost of the underlying records upon which retailers must rely must also be considered in the cost estimate. As discussed more fully below, these costs may include the country of origin labels or signs that retailers may contract with suppliers to provide information directly to consumers, the contracts or other means that retailers are required to use to ensure that their suppliers maintain verifiable audit trails, and verifiable segregation plans.

Finally, the program as a whole will entail substantial costs beyond those associated with the recordkeeping elements noted above. Product segregation from the farm or ranch all the way through to retail sale will require significant resources; employee training, auditing, and compliance efforts will also add to the recordkeeping costs that USDA considered under the Paperwork Reduction Act.

A. Country of Origin Labeling Program

1. General

The Agricultural Marketing Act of 1946, as amended by Section 10816 of the Farm Security and Rural Investment Act of 2002, requires USDA to develop and execute a federal country of origin labeling program. USDA is required to promulgate regulations to implement a mandatory program by September 30, 2004; the statute directs USDA to implement a voluntary program in the interim. The "COL Guidelines" were published on October 11, 2002. 67 Fed. Reg. 63367 (Oct. 11, 2002).

USDA states that "when retailers and their suppliers choose to adopt the guidelines all of the provisions contained within must be followed." 67 Fed. Reg. at 63371. Thus, retailers who might be interested in participating in the interim voluntary program would be required to have a comprehensive program in place for all of their covered commodities in order to do so. Penalties may be assessed under the Perishable Agricultural Commodities Act (PACA) against those who do not follow the Guidelines in their entirety. *Id.*

USDA has indicated that, although issues still remain to be worked out, the Department's intention was to publish guidelines that were as close as possible to the mandatory program that must be implemented by September 30, 2004. Thus, the recordkeeping requirements for the voluntary guidelines are likely to be quite similar to those that USDA would propose under the mandatory COL program that will take effect in little more than 18 months.

2. Retailers Required To Inform Consumers of Country of Origin of All “Covered Commodities”

The law specifically directs retailers to inform consumers of the country of origin of all “covered commodities” at the final point of retail sale. 7 USC § 1638a. “Covered commodities” include the following foods:

- (1) Muscle cuts of beef, lamb, and pork;
- (2) Ground beef, ground lamb, and ground pork;
- (3) Farm-raised fish;
- (4) Wild fish;
- (5) Perishable agricultural commodities (essentially, fresh and frozen produce); and
- (6) Peanuts

7 USC § 1638(2). Retailers are also responsible for advising consumers whether covered fish products are “wild-caught” or “farm-raised.” See 7 USC § 1638a(a)(3). The statute excludes covered commodities that are ingredients in processed food items and does not apply to covered commodities sold at restaurants. 7 USC §§ 1638a(2)(B), 1638a(b).

FMI conservatively estimates that at least 600 different “covered commodities” are sold in the average retail store.² Of course, retailers may offer hundreds of thousands of individual food items that fall within each of the 600 covered commodity types over the course of each year. Moreover, just as consumers shop at multiple grocery stores, retailers depend on multiple suppliers for each covered commodity type. Factors such as seasonality, price, and quality require retailers to have at least two or three different suppliers for each covered commodity or approximately 1,500 different covered commodity suppliers per store.

3. Country of Origin Determination

Section 282(a)(2) of Section 10816 explains the circumstances under which a covered commodity will qualify to be designated as originating in the United States. The following rules apply:

- * Beef, pork and lamb must be exclusively born, raised and slaughtered in the US;

² Typical grocery stores offer consumers 300 to 400 different types of fresh fruits and vegetables alone. The federal law additionally requires labeling for frozen fruits and vegetables; all muscle cuts of beef, pork and lamb; all ground beef – every package of hamburger – as well as ground pork and lamb; all fresh and frozen fish (including shrimp and other shellfish); and peanuts. Thus, based on research with our members, we have found that 600 is a relatively conservative number of covered commodity types that will require country of origin labeling.

- * Farm-raised fish must be hatched, raised harvested and processed in the US;
- * Wild fish must be harvested in U.S. waters or by U.S.-flagged vessels and processed in the US or aboard a US-flagged vessel; and
- * Perishable agricultural commodities must be "exclusively produced" in the U.S.

7 USC § 1638a(a)(2).

The statute does not, however, explain how to identify the country of origin when production occurs in more than one country; that difficult task falls to USDA. Under the COL Guidelines, USDA has put forth a program under which retailers will essentially be required to advise consumers of the country in which each stage of processing occurred for products that do not meet the statutory requirements for U.S. country of origin but are, nonetheless, produced to some extent within the U.S.³ For example, beef from a cow that was born in Canada and raised and slaughtered in the U.S. will not qualify for a designation as "U.S. product" under the recent amendments to the AMA; instead, USDA's Guidelines direct retailers to advise consumers that beef with the aforementioned provenance is "beef (born in Canada, raised and slaughtered in the U.S.)."

Labeling for so-called "blended" covered commodity products – such as hamburger and fruit salad – is even more complex. Under the Guidelines, a country of origin declaration that identifies the country in which each stage of production occurs must be included for each covered commodity of the "blended" product . . . in descending order of predominance. So, for example, a fruit salad must be labeled so that the complete country of origin determination is provided for each ingredient; the ingredients must be listed in descending order of predominance. A bag of shrimp tails that had been sourced from multiple countries must identify all of the countries from which the shrimp were sourced in descending order of predominance. Similarly, a package of hamburger, which often contains beef from several sources, would have to be labeled to identify the complete country of origin determination for each source, which might well result in the following label:

Beef [beef (born in Canada, raised and slaughtered in US); beef (born and raised in Canada, slaughtered in US); beef (product of Argentina); beef (born in Mexico, raised and slaughtered in US)]

Some Members of Congress have now charged that the law requires even greater detail than USDA has laid out under the Guidelines. Representative Bono and some of her colleagues believe that retailers should be required to identify the specific percentage of

³ Under the COL guidelines, "covered commodities" that are produced entirely outside of the U.S. are subject to the current rules for identifying country of origin under the Tariff Act and its accompanying regulations.

each covered commodity in a blended product on the label. See Letter from Rep. M. Bono to USDA (reprinted in February 4, 2003 press release, copy enclosed).⁴

4. Records Required under the Guidelines

In order to assure that the consumer is being presented with accurate information, the COL Guidelines set forth a comprehensive recordkeeping system. The primary purpose of the recordkeeping is to document the country in which each stage of production occurred. For example, as discussed more fully above, the country of origin determination for beef requires information on the countries where the cow was born, raised and slaughtered and the labeling may require a statement to that effect. Those facts must be fully documented to meet the federal standard.

USDA states that recordkeeping is:

...essential to the integrity of any country of origin labeling program, whether it be a voluntary program or a mandatory program. Recordkeeping creates a paper trail that is a critical element in carrying out any internal reviews of a system conducted by industry representatives under a voluntary program or in enforcement audits that will be necessary for the Agency to conduct under the mandatory program.⁵

67 Fed. Reg. at 70205. Toward that end, the Guidelines require that every person that prepares, stores, handles or distributes a covered commodity for retail sale must keep records on the country of origin for a period of at least two years. Guidelines at 3.A. All persons who are engaged in the business of supplying a covered commodity to a retailer – including, but not limited to producers, growers, handlers, packers, processors, and importers – are required to maintain auditable records documenting the origin of covered commodities. Guidelines at 3.B. Importantly, self-certification is not sufficient. Guidelines at 3.B.

Although each person in the supply chain for every covered commodity would be required to maintain records, retailers have the additional burden of ensuring that a verifiable audit trail is maintained by the supplier community “through contracts or other means.” Guidelines at 3.C. These and other comprehensive records that retailers must hold may be maintained at points of distribution and sale, warehouses, or at central

⁴ Of course, if retailers were required to determine the precise percentage at which each covered commodity was present in a blended product, the costs for recordkeeping would be even greater.

⁵ In response to USDA’s recordkeeping cost estimate, one of the Congressional proponents of the legislative provision forcefully vowed that he would “not stand to allow USDA or others to weaken country-of-origin labeling during this rulemaking process.” Sparks Report (copy enclosed). A strong recordkeeping component will not weaken the COL program. The purpose of recordkeeping is to ensure the accuracy of the information that consumers receive. Indeed, recordkeeping strengthens the integrity of the program.

offices. In addition, retailers must maintain records at each and every retail store to identify the country of origin of all covered commodities sold at the facility for two years.

All records must be legible and written in English, and may be maintained in either electronic or hard copy formats. Guidelines at 3.D. Various forms of documentation will be accepted, provided the necessary tracking information is available. Guidelines at 3.F.

In addition to records documenting the country in which each stage of production occurs for every covered commodity sold in a grocery store, the Guidelines require all stages of the production and distribution chain, including retailers, to develop and maintain a “verifiable segregation plan” when similar covered commodities may be present from more than one country or from different production regimes. Guidelines at 3.E. The purpose of the plans is to ensure that the products are properly identified to consumers; that is, to ensure that bananas from Costa Rica are not mistakenly labeled “Product of Guatemala,” and that hamburger from cows that were born and raised in Canada and slaughtered in the U.S. is not mistakenly labeled “Born in Canada and raised and slaughtered in the U.S.”

B. USDA Cost Estimates

The Paperwork Reduction Act (44 USC Secs. 3501, et seq.) prohibits federal agencies from conducting or sponsoring the “collection of information,” unless the agency has taken actions to minimize the amount of information requested and the agency has received approval from the Office of Management and Budget to conduct such information collection. 44 USC § 3507. The term “collection of information” is defined as “the obtaining or soliciting of facts . . . by an agency through the use of . . . recordkeeping requirements . . . for . . . ten or more persons. . .”.

To fulfill its obligations under the Paperwork Reduction Act as they relate to the COL program, USDA requested an emergency approval from OMB for the new information collection entitled, “Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Agricultural Marketing Act of 1946.” 67 Fed. Reg. 70205 (November 21, 2002). The notice provides the following cost estimates for the labor associated with recordkeeping for each segment of the food production chain:

Producers (commercial farms, ranchers and fishermen):

Start-up Costs:

2,000,000 producers x 8 hrs x \$25/hr = \$400 million

Ongoing Costs:

2,000,000 producers x 12 hrs/yr x \$25/hr = \$600 million/first year

Food Handlers (packers, processors, importers, wholesalers, and distributors):

Start-up Costs:

100,000 food handlers x 16 hrs x \$50/hr = \$80 million

Ongoing Costs:

100,000 food handlers x 52 hrs/yr x \$50/hr = \$260 million/first year

Retailers:

Start-up Costs:

31,000 retailers x 40 hrs x \$50/hr = \$62 million

Ongoing Costs:

31,000 retailers x 365 hrs/yr x \$50/hr = \$566 million/first year

The estimate for the number of retailers comes from USDA's estimate of 31,000 outlets that are licensed under the Perishable Agricultural Commodities Act (PACA). According to USDA, the cost of \$50 per hour is intended to reflect the fact that a broad cross-section of representatives – from store clerks to high level corporate executives – will have some involvement in establishing and maintaining the necessary record-keeping systems.⁶

C. FMI Comments

1. USDA's Cost Estimate – Which Only Considers Labor Required To Develop Recordkeeping System and Maintain It for One Year – Is Low

The Paperwork Reduction Act (PRA) requires USDA to estimate the costs associated with the “collection of information” necessitated by the COL Guidelines and, eventually, those necessitated by the proposed and final regulations. As discussed above, “collection of information” is a broad term, particularly in this context, and encompasses not only the system by which retailers will maintain information in every store and at corporate headquarters for two years on the country of origin of every covered commodity offered for sale, but also must necessarily include the labor and infrastructure costs that retailers will bear in obtaining the requisite information from suppliers because retailers cannot provide the facts to consumers that they are required to provide by the terms of the statute without first obtaining the information from their suppliers.

⁶ At this point, we have no reason to believe that either the number of retailers affected (31,000) or the estimated hourly labor rate is inaccurate. Since this statute uses the PACA definition of retailer, all PACA-licensed retailers will be affected. Moreover, given the broad cross-section of personnel necessary to implement the COL program, we expect that the \$50 per hour labor rate estimate is reasonable, at least for the immediate purposes.

a. Estimate of Retailer Recordkeeping Costs Must Include Costs of Obtaining Necessary Information from Suppliers

Retailers are required under the statute to provide consumers with country of origin information for covered commodities that retailers can only obtain from their suppliers. Unlike other food labeling information, which manufacturers of the food are in the best position to know and are required to provide directly on the food label, retailers are dependent upon their suppliers to fulfill the retailers' statutory COL obligations. Retailers cannot look at a chub of hamburger meat and determine whether the meat was from cattle that was born in Canada and raised and slaughtered in the U.S. or whether the meat meets the new federal definition for U.S. product. Accordingly, to collect the country of origin information required under the statute as interpreted by USDA, retailers will need to establish systems to obtain the information from their suppliers, as well as to maintain the information in readily accessible form for two years.

USDA's estimate of 40 person hours to design the system may approximate the amount of time necessary to perform some of the preparatory work, such as developing a corporate system for establishing a COL program⁷ and the systems necessary to implement that program in every store. Additional time and paperwork will be required to identify all covered commodity suppliers; to provide preliminary communications to those suppliers to advise them that retailers will need country of origin information on covered commodities; to develop mechanisms to ensure the accuracy of the information provided by the supplier; and to audit the resulting program to ensure the efficacy of the system.

The systems will also require implementation of mechanisms to convey the information from each supplier to the retailer. In some cases, the retailer and supplier may contract for the supplier to label each covered commodity or to provide signs or labels with the shipment if the product cannot be individually labeled. The labels or signs, then, would serve as records that are used to obtain or solicit the facts on the country of origin of the product to satisfy the Guidelines and eventually the underlying law. The contractual agreement under which the supplier provided labels or signs to the retailer would be another such record. As such, these documents meet the federal "information collection" definition and the costs associated with them should be included in USDA's cost estimate.

USDA's Guidelines also would require retailers to use "contracts or other means" to ensure that the supplier (and, presumably, the supplier's suppliers) are maintaining a verifiable audit trail. The contractual memorialization of the supplier's obligations is yet another record, the development and negotiation of which are costs that should be factored in to USDA's recordkeeping cost estimates.

⁷ Many of our members are putting together corporate COL teams, which often involve ten to fifteen executives including those with responsibility for the meat, deli, seafood, produce, and perishables department; legal staff; information services staff; and procurement, operational, and training specialists.

USDA's Guidelines require the development of "verifiable segregation plans," additional records that are used to obtain or solicit country of origin "facts" about the covered commodities that are offered for sale by retailers.

As retailers use multiple suppliers for each covered commodity, the foregoing records will need to be developed and negotiated thousands of times over so that the retailer will have the necessary information for each supplier of every covered commodity. Based on the research that we have done with our membership, we believe that a system of this nature will require substantially more than 40 person hours per store to develop.⁸ Moreover, given the complexity of the country of origin declaration that will need to be provided, the high number of covered commodities, the multiple areas of the store that are affected, and the frequency with which covered commodities (most of which are perishable products) are delivered to the stores, our members believe that it will require substantially more time than a single person hour per day to maintain the program. We are not, however, in a position to provide the Agency with a specific alternate estimate of the time it will take to prepare the necessary information for the program. However, as we work with our members and they move ahead, we may well have more specific data to provide in the future.

b. Estimate Fails To Consider "Hard" Costs of Recordkeeping, such as Electronic or Paper Storage Systems

Under the Guidelines, retailers will be required to maintain records for two years at every store and at corporate headquarters to document the country of origin of every covered commodity sold at the retail store, as well as the retailer's obligations to ensure that the country of origin information that was received from the supplier was accurate. Although the exact cost is unclear to us at this point, clearly, some "hard" costs will be incurred. USDA, however, failed to include any costs at all for this element. Following is what we have learned so far.

Small and single store retail operators may not have electronic equipment sophisticated enough to maintain the breadth of information currently envisioned under the Guidelines for the length of time required. A paper system sufficient to maintain records of this nature will necessarily require physical space, which is especially costly to smaller, urban store operators.

Medium-sized operators may have more electronic capabilities, but they will almost certainly incur some costs to upgrade their systems and to enable them to store and retrieve records of this nature at every store. One systems expert for a small retail grocery chain estimated that the costs for the necessary computer equipment and software would be approximately \$3000 to \$8000 per store. Some stores may have hand-held

⁸ As much of the records development will entail negotiating with suppliers, these recordkeeping and development resources will be borne not only by retailers but by each of their suppliers, as well as their suppliers.

scanners that might assist in automating the process, however, a significant number of the devices in existence apparently would need to be upgraded in order to accommodate the new information. Larger operators may have electronic systems in place, although they will likely need to be upgraded to handle the substantial additional information that must be accessible at every store.

c. Estimate Fails To Consider Non-Paperwork Costs

Although USDA is not required to consider non-paperwork costs under the Paperwork Reduction Act, we note for the record that the costs to implement the country of origin labeling program mandated by federal law will far exceed those necessitated by the recordkeeping elements of the program. Perhaps the greatest source of additional cost will be product segregation. The distribution channels will need to be substantially revised to ensure that otherwise fungible commodities are separated by country of origin.

For example, we understand that meat processing plants may shift to a system where they process meat from cattle with different places of birth and feeding on different days of the week. So, perhaps cattle that were born and raised in the U.S. would only be processed on Monday; cattle that were born in Mexico and raised in the U.S. would be processed on Tuesday; cattle that were born and raised in Canada would be processed on Wednesday, and so on. Shrimp from Thailand will need to be separated from shrimp from Indonesia.

Segregation of produce will also need to be accomplished from ranch to the retail shelf to ensure, for example, that bananas from Guatemala are not confused with bananas from Honduras and tomatoes from Holland are not mixed with tomatoes from Canada. Mixing bulk produce will become a thing of the past. If retail stores are required to segregate bins of basically the same commodities at the display case, they will inevitably decrease the number of their suppliers and the number of their items just so they can cope. The impact on blended products, such as hamburger or fruit salad, is still to be determined.

In addition to the paperwork and segregation costs, retailers and others will face substantial costs to educate employees, to audit their own and their suppliers' programs, and in the inevitable fines that will be incurred, not just by retailers, but by suppliers as well.⁹

2. Costs Required Under Federal COL Program Are Not Mandated By Other State or Federal Laws

Some have charged that USDA has overstated the costs associated with recordkeeping because state or federal laws already require that country of origin labeling

⁹ Non-retailers are subject to significant penalties under the statute that are arguably greater than those to which retailers are subject. See 7 U.S.C. § 1636b (non-retailers subject to penalties of \$10,000 per day for each *per se* violation of the statute, as well as cease and desist orders, injunctive relief).

records be maintained. However, no federal law requires this information and no individual state law currently in effect establishes a system that requires records of this nature.

a. Federal Law

The federal laws that are cited (or alluded to) as requiring the records necessary to satisfy the AMA's country of origin labeling program are usually the Perishable Agricultural Commodities Act and the Tariff Act of 1930.

First, PACA only applies to perishable agricultural commodities (PAC's) and, therefore, does not require any sort of records relevant to beef, pork, lamb, fresh or frozen shellfish or peanuts at all. If PACA has any bearing on recordkeeping needed under the new federal COL law, it would only be related to perishable agricultural commodities. However, PACA does not require PAC's to bear country of origin labeling. Accordingly, PACA does not require that records be kept to document country of origin, unless a claim is voluntarily made regarding the product. It is possible that some of the records otherwise required under PACA may be useful in satisfying some of the recordkeeping necessary for the federal COL program, however, records such as the contracts between retailers and suppliers regarding the accuracy of the country of origin information or the stickers themselves or verifiable segregation plans to segregate product by country of origin are far beyond the scope of any records that are currently being kept under PACA for any commodities, even PAC's.

Second, the Tariff Act of 1930 requires the importer of record to certify the country of origin of most imported goods; some bulk food commodities are exempted from the requirement. Significantly, the Tariff Act does not require any marking or records for domestic products; thus, to the extent that the Tariff Act requires country of origin records, they are only for imported products and the AMA's recordkeeping requirements for domestic products are all additional recordkeeping burdens for domestic producers. Moreover, USDA interprets the recently amended AMA so that products that are exclusively produced outside of the United States are not required to bear any further labeling. Thus, the records required under the AMA are in addition to any that are required under the Tariff Act.

Finally, neither the Federal Meat Inspection Act nor the Federal Food, Drug and Cosmetic Act require country of origin information to appear on food products.

b. State Law

Although a few states have country of origin labeling laws, no state law covers the range of products encompassed by the federal law or requires the types of determinations that are necessitated by the AMA and, in turn, by the Guidelines; none will impose the types of costs on all U.S. businesses – farmers, ranchers, growers,

fisheries and fishermen, processors, handlers and retailers – that are imposed by the current federal law and Guidelines.

For example, although Florida law requires that retailers identify the country of origin of fresh produce sold in the state, numerous factors distinguish the Florida law from the federal program. First, the Florida law applies only to fresh produce, whereas the federal law covers the following in addition to fresh produce: frozen produce; muscle cuts of beef, pork, and lamb; ground beef, pork and lamb; fresh and frozen seafood (which must also be identified as “farm-raised” or “wild-caught”) and peanuts.

Second, the federal law requires a country of origin determination that is far more complex than that required under the Florida law. Indeed, the depth of the standard for determining country of origin under the federal law is in large measure responsible for much of the additional recordkeeping – if an accurate country of origin declaration depends on where the underlying cow was born or where the fish was caught, then records of where those events occur will need to be kept in order to enable retailers to make a reliable country of origin declaration to consumers.

A few other states have enacted laws purporting to require country of origin labeling for meat products, however, USDA has properly determined that these laws are preempted by the FMIA.¹⁰ Finally, only the recently amended AMA applies to covered commodities sold in all fifty states; the state laws are necessarily of more limited scope

Thus, the breadth of the commodities that must bear labeling, the geographic expanse for which the labeling is required, and the depth of the determination all distinguish the federal law from the state laws that are currently in existence. Any recordkeeping that is required under the state laws will have no more than a minor mitigating impact on the overall recordkeeping costs associated with the federal COL program mandated by the Agricultural Marketing Act.

3. Response to Charge that Recordkeeping Costs Could Be Minimized if Recordkeeping Was Only Required for Imported Products

Proponents of the legislation have charged that the costs for recordkeeping could be minimized if USDA only required producers of imported covered commodities to keep records. This argument fails for the following reasons.

First, the law is structured to require retailers to inform consumers of the country of origin of all covered commodities, regardless of whether the commodity was produced domestically or was imported. The law applies equally to domestic and imported products; the recordkeeping requirements should likewise apply equally. Retailers can

¹⁰ Copies of letters from USDA regarding the preemptive effect of the FMIA on state COL laws for meat are enclosed.

only provide consumers with the accurate country of origin information that is required under the law if records document the complete provenance of the product, whether it is appropriate to identify the product as of U.S. origin or whether another declaration is required.

Second, establishing different requirements for domestic and imported products, especially where the underlying law provides no basis for doing so, would run afoul of our obligations under the North American Free Trade Agreement and other international trade laws.

Third, if, as the proponents of the legislation assume, domestically produced commodities are more desirable than imported products and if those same commodities are the only ones whose provenance need not be documented, any product for which no documentation exists will automatically be claimed to be of U.S. origin. U.S. producers would ultimately be harmed under such a system because they would have no way to demonstrate or verify that their products truly met the criteria for U.S. origin or that others were perpetrating fraudulent claims.

Fourth, the value of substantiating claims made to consumers regarding food or any other product is well-established in the law. See, e.g., Federal Trade Commission Act, 15 USC §§ 41, et seq. Claims regarding country of origin should likewise be properly documented, regardless of whether the product is imported or of U.S. origin so that consumers know that they can trust the claims that are being made.

* * *

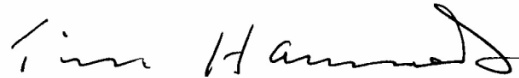
As discussed more fully above, we believe USDA's \$2 billion estimate for recordkeeping significantly underestimates the costs that will be incurred under the federal country of origin labeling program. The estimate considers only the labor that will be required to establish systems, but does not accurately reflect the labor that will be necessary to negotiate with suppliers to obtain the necessary information and completely omits any "hard" costs for physical storage space or electronic equipment. No state or federal laws currently require the type of information that would be necessitated under the federal program. Moreover, the estimates USDA conducted under the Paperwork Reduction Act by definition reflect only those costs associated with "information collection" and do not represent the overall costs of the program, which will be even greater.

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We appreciate the opportunity to provide our comments on this matter. If you have any questions regarding the foregoing or if we may be of assistance in any other way, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Hammonds". The signature is fluid and cursive, with a large, stylized "H" and a long, sweeping underline.

Tim Hammonds
President and CEO

Enclosures

cc: Office of Management and Budget (via messenger)
New Executive Office Building
725 17th Street, NW
Room 725
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Attn: Desk Officer

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